

POLICY NUMBER: 205.16
DIVISION: Environmental Public Health
POLICY TITLE: Fugitive Dust Investigation and Enforcement
AGENCY: Lincoln-Lancaster County Health Department (LLCHD)
AUTHORITY: Board of Health
DRAFTED: 03/17/2015
APPROVED:
REVISED:
REVIEWED:

POLICY STATEMENT:

Article 2, Section 32 of the Lincoln-Lancaster County Air Pollution Control Program Regulations and Standards (LLCAPCPRS) establishes the duty to prevent particulate matter from escaping in such amounts or concentrations that it remains visible beyond the premises from which it originates (a.k.a. visible fugitive dust). Persons who are handling/transporting/storing material(s), or who are constructing/using/repairing/demolishing a building or its appurtenances, or any road, driveway, or other open area must apply such reasonable measures (see Attachment A of this policy) as may be necessary to prevent visible fugitive dust.

Fugitive dust is comprised of microscopic solid particulate matter (PM) that, when inhaled, can cause serious health problems. The purpose of this policy is to ensure:

- 1) That visible fugitive dust complaints are addressed in a fair and consistent manner;
- 2) That a resolution of visible fugitive dust problems and return to compliance is achieved quickly;
- 3) That enforcement is pursued when the alleged violator fails to achieve compliance in a timely manner; and
- 4) That investigating staff properly document all relevant information.

PROCEDURES:

I. Complaint Intake and Initiation of Investigation

A. Department staff shall attempt to gather and document the following information:

1. The name and contact information for the complainant, if he/she is willing to provide it;
2. The date, time, and location the alleged nuisance and/or violation;
3. A brief description of the nature and apparent cause of the alleged nuisance; and
4. Staff should document all health impacts described by the complainant. If the complainant is experiencing any detrimental health effects, staff should advise the complainant to contact his or her medical care provider, as appropriate. If the complainant is unable to speak or breathe, staff shall:
 - a. Record the complainant's telephone number via caller identification;
 - b. Inform the complainant that staff will transfer his/her call to emergency services, and advise the complainant to remain on the line during the transfer;
 - c. Advise the complainant to call '911' if the call transfer fails;
 - d. Advise the complainant to vacate the area and seek clean air, if feasible; and
 - e. Transfer the call to emergency services. If the transfer fails, staff shall call 911 and inform emergency services of the call, and the concerns identified.

- B. Prior to investigating the complaint, staff shall:
 - 1. Check the electronic complaint tracking system to determine if the location of the alleged nuisance or violation has been identified in prior complaints;
 - 2. If any prior complaints exist for the described location, determine if the nature of prior complaints is the same as, or similar to the alleged nuisance or violation described by the complainant; and
 - 3. Determine the name of the person/company responsible for any prior alleged nuisances or violations.
- C. Staff shall respond to complaints as quickly as is practicable during regular work hours. Staff should bring the following supplies/equipment when conducting an inspection or investigation:
 - 1. Department-issued identification and business card(s);
 - 2. Writing instrument, clipboard, and all necessary forms and fact sheets;
 - 3. Any personal protective equipment (PPE) deemed necessary based on information gathered from the complainant; and
 - 4. Digital camera and/or video recorder.
- D. Upon arriving at the location of the alleged violation, staff shall perform observations for visible fugitive dust emissions at the boundaries of the premises.

II. Complaint Investigation – Visible Fugitive Dust Is Not Observed

- A. If staff do not observe any visible fugitive dust leaving the premises, staff shall:
 - 1. Observe the work activity being performed on the site, and also any dust control measures that are being employed.
 - 2. Make contact with site personnel (preferably site supervisor or manager), show identification, and provide them with a business card.
 - 3. Advise the site personnel that a complaint of fugitive dust has been received, and of their duty to prevent visible fugitive dust.
 - 4. Gather and document the following information:
 - a. Personnel name, title, phone number, and employer's name (company);
 - b. Name and title of project manager or other such person with substantial responsibility/control over operation of the site (if different);
 - c. The date and time of initial contact with site personnel; and
 - d. Results of all observations, absence of visible fugitive dust emissions, and measures being taken (if any) to prevent/control fugitive dust at the time of inspection.
- B. If staff find that the work activity being performed is conducive to creating visible fugitive dust, and that the site personnel are not employing reasonable measures to control the dust created by the work activity, staff shall:
 - 1. Inform the site personnel of his/her duty to employ all such reasonable measures as necessary to prevent emissions of visible fugitive dust.
 - 2. Provide the 'Fugitive Dust Control Fact Sheet' (Attachment B) to site personnel.

C. Upon returning to the office, staff shall:

1. Attempt to contact and inform the complainant that no violation was found, and that the responsible party has been informed of their duty to apply dust control measures and/or cease operations to prevent visible fugitive dust violations. Staff shall request that the complainant call the Department at (402) 441-8040 if the fugitive dust problems persist.
2. Attempt to make contact (via phone or e-mail) with the following parties and inform them that a complaint was received at the property in question, that no violation was found, and of the duty to prevent visible fugitive dust. If e-mail is available, send each party a copy of the 'Fugitive Dust Control Fact Sheet'.
 - a. Main office/headquarters of the company performing the work;
 - b. Main office/headquarters of the site's general contractor (if applicable); and
 - c. Owner/registered agent of the property (if different than a. or b. above).
3. Proceed to item **V. Documentation**. Upon completion of all documentation, the case should be closed.

III. Complaint Investigation – Visible Fugitive Dust Is Observed

A. If staff do observe visible fugitive dust leaving the premises, staff shall:

1. Take photographs and/or video recordings of any dust observed leaving the premises.
2. Observe and document the work activity being performed on the site, and also any dust control measures that are being employed.
3. Make contact with site personnel (preferably site supervisor or manager), show identification, and provide them with a business card.
4. Advise the site personnel that a complaint of fugitive dust has been received, and of their duty to prevent visible fugitive dust.
5. Gather and document the following information:
 - a. Personnel name, title, phone number, and their employer's name (company);
 - b. Name and title of project manager or other such person with substantial responsibility/control over operation of the site (if different);
 - c. The date and time of initial contact with site personnel; and
 - d. Results of all observations, presence/absence of visible fugitive dust emissions, and measures being taken (if any) to prevent/control fugitive dust at the time of inspection.
6. Provide the 'Fugitive Dust Control Fact Sheet' to site personnel.

B. Staff shall issue an "OFFICIAL NOTICE" to the site personnel. The "OFFICIAL NOTICE" form should contain the name of the site personnel's employer. Staff shall determine whether to issue the "OFFICIAL NOTICE" as either a warning or a violation. Whenever necessary, staff may consult with the Air Quality Program (AQP) Supervisor and/or the Environmental Public Health (EPH) Division Manager to determine whether the "OFFICIAL NOTICE" should be issued as a warning or a violation.

- C. If an "OFFICIAL NOTICE" is issued as a warning, staff shall advise the site personnel to comply with the following within one (1) hour of receiving the "OFFICIAL NOTICE". Staff shall keep the original signed "OFFICIAL NOTICE" and provide the carbon copy to the responsible party. The notice shall state the date and time by which the following must be achieved:
1. Commence application of reasonable measures to control/prevent visible fugitive dust.
 2. If no dust control measures are readily available, site personnel shall be advised to comply with the following:
 - a. Cease the operation of any equipment on-site (loaders, graders, scrapers, dirt-movers, etc.) that may cause or contribute to a fugitive dust violation until adequate dust control measures have been applied. Site personnel may continue the operation of any on-site equipment that does not cause or contribute to a fugitive dust violation.
 - b. Cease loading or off-loading any materials if the dust generated will cause or contribute to a fugitive dust violation.
 - c. Minimize the distance traveled on haul roads by having haul trucks park as close to the site entrance as possible, without creating safety hazards, until adequate dust control measures have been applied.
 3. Site personnel should continue compliance with Items III.C.2.a.-b. until adequate measures have been applied to control/prevent fugitive dust, OR until such time that meteorological conditions allow for work to occur on-site without causing or contributing to a visible fugitive dust violation.
 4. Staff shall direct site personnel to contact the Health Department in the case of future equipment failures or other circumstances that may lead to a violation of the visible fugitive dust regulations.
- D. If an "OFFICIAL NOTICE" is issued as a violation, staff shall advise the responsible party that the case may be referred to the Health Director for issuance of a Complaint and Order. Staff shall keep the original signed "OFFICIAL NOTICE" and provide the carbon copy to the responsible party.
- E. Upon returning to the office, staff shall:
1. Attempt to contact and inform the complainant of the alleged violator's duty to apply dust control measures and/or cease operations to prevent additional visible fugitive dust violations. Staff shall inform the complainant of the deadline by which the alleged violator must come into compliance, and request that the complainant call the Department at (402) 441-8040 if the fugitive dust problems persist after the given deadline.
 2. Attempt to make contact (via phone or e-mail) with the following parties and inform them that a complaint was received at the property in question, that a violation was found and documented, and that an "OFFICIAL NOTICE" was provided to site personnel (include the name of the person who received the notice). If e-mail is available, provide them with a copy of the 'Fugitive Dust Control Fact Sheet', as well as a digital copy of the "OFFICIAL NOTICE" form.
 - a. Main office/headquarters of the company performing the work;
 - b. Main office/headquarters of the site's general contractor (if applicable); and
 - c. Owner/registered agent of the property (if different from a. or b. above).

3. Staff shall direct office/headquarter personnel associated with the person/company performing the work at the site to contact the Department in the case of future equipment failures or other circumstances that may lead to a violation of the visible fugitive dust regulations. Staff should inquire as to the cause of the problem, measures being taken to remedy the problem, and the approximate time frame by which the problem will be remedied or operations will be ceased (if necessary).
- F. Staff shall perform a follow-up investigation (which may consist solely of a phone call to the complainant) at the end of the one (1) hour period and document findings. Staff shall proceed with the following, as applicable:
 1. If visible fugitive dust resulting from activities prohibited under item III.C.2. is observed during the follow-up investigation, staff shall proceed with the steps set forth in item **IV. Enforcement**.
 2. If staff do not observe any visible fugitive dust during the follow-up investigation, or if staff are informed by the complainant that the fugitive dust problem has been resolved prior to the follow-up investigation, then staff shall proceed with item **V. Documentation**. Upon completion of all documentation, the case should be closed.

IV. Enforcement

- A. Upon discovery of a visible fugitive dust violation during a follow-up investigation, or during a complaint investigation where the person/company responsible has been notified of prior violations at the same premises, staff shall draft a letter to the person/company responsible for the alleged violation, to include the following:
 1. Notification that, in accordance with Department policy adopted by the Lancaster County Board of Health, a 'Complaint and Order' will be drafted for an alleged violation of Article 2, Section 32 of the LLCAPCPRS.
 2. Notification that the person/company may be subject to a civil penalty of up to \$10,000 per day for each additional day that they are found to be in violation of Article 2, Section 32 of the LLCAPCPRS.
- B. Within forty-five (45) days of documenting the initial violation, or sooner if deemed appropriate, AQP staff shall draft a 'Complaint and Order' as follows:
 1. If additional violations are observed and documented during the forty-five (45) day period following the initial violation, the staff shall identify the following:
 - a. The number of days on which the staff observed a violation at the premises on which the initial violation occurred;
 - b. The date and time at which each subsequent violation was observed; and
 - c. The name of the person to which the "OFFICIAL NOTICE" of violation was issued.
 2. Staff shall route the Complaint and Order to the AQP Supervisor, the EPH Division Manager, and the Air Pollution Control Officer (Health Director) for review and approval.
 3. Upon resolution of the Complaint and Order, including all associated monetary penalties and/or supplemental environmental projects, staff shall proceed with item **V. Documentation**. Upon completion of all documentation, the case should be closed.

V. Documentation

- A. Within one (1) business day of completing an investigation, staff should open a complaint case in the electronic complaint tracking system, unless an open case already exists for the same person/company and property. Within the electronic record, staff shall:
 - 1. Document all information required under items II.A.4., and III.A.5.
 - 2. Document all communication (in-person, phone, e-mail, or written) that takes place during the investigation, as well as any follow-up communication that may take place with the complainant and/or the alleged violator.
 - 3. Upload any photos taken, as well as scanned copies of any letters or notices that are issued.
- B. If the person/company responsible for a documented warning or violation notifies the Department of equipment failures or other circumstances that may lead to an additional violation, staff should obtain and document the following in the electronic record:
 - 1. The cause of the problem;
 - 2. The measures being taken to remedy the problem; and
 - 3. The approximate time frame by which the problem will be remedied or operations will be ceased (if necessary).
- C. If the results of an initial complaint investigation, or of a follow-up investigation indicate that the person/company responsible for the alleged violation have taken reasonable measures to prevent visible fugitive dust, and no violations are documented after the initial "OFFICIAL NOTICE" of warning or violation, then the investigating staff shall close the case in the electronic complaint tracking system.

Attachment A

**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT**

3140 N Street, Lincoln, NE 68510

(402) 441-8000 lincoln.ne.gov/health

OFFICIAL NOTICE

Name: _____

Address: _____

City/State/ZIP: _____

Date: _____ Time: _____ ☐ AM ☐ PM

Location: _____

YOU ARE HEREBY NOTIFIED THAT YOU ARE ALLEGED TO BE IN VIOLATION OF CITY/COUNTY HEALTH CODES AND/OR LINCOLN-LANCASTER COUNTY AIR POLLUTION CONTROL PROGRAM REGULATIONS AND STANDARDS, AS INDICATED BELOW:

- ☐ Causing or permitting an air pollution nuisance.
- ☐ Causing or permitting fugitive dust to be emitted in such quantities that it is visible beyond the premises.
- ☐ Causing or permitting the prohibited open burning of refuse materials.
- ☐ Causing or permitting an odor nuisance.
- ☐ Causing or permitting smoking in a public place (non-compliant smoking area).
- ☐ Causing or permitting a noise disturbance.
- ☐ Causing or permitting stack emissions of greater than or equal to 20% opacity as measured by Method 9.
- ☐ Failure to operate control equipment as required by a valid permit.
- ☐ Failure to obtain a required air quality construction and/or operating permit.
- ☐ Other: _____

- ☐ **WARNING** The conditions must be corrected within _____. Failure to correct said conditions may result in referral to the City or County Attorney, or in the issuance of a Complaint and Order. Charges may be brought against you in County Court, District 3.

- ☐ **VIOLATION** This matter may be referred to either:
- ☐ The Health Director for issuance of a Complaint and Order; or
 - ☐ The City or County Attorney. If charges are brought against you in County Court, District 3, the Attorney's Office will advise you of your court appearance date.

I acknowledge receipt of this notice.

✕

☐ Owner ☐ Occupant ☐ Manager/Supervisor ☐ Employee ☐ Other

Environmental Health Specialist / Engineer

Phone Number _____

Attachment B



Lincoln-Lancaster County Health Department

Air Quality Program

Fugitive Dust Control Fact Sheet

If you see dust, control it.

The Lincoln-Lancaster County Health Department (LLCHD) Air Quality Program is responsible for administering and enforcing regulations that are designed to prevent the escape of visible dust (aka, visible fugitive dust). In accordance with Article 2, Section 7, paragraph (B) of the Lincoln-Lancaster County Air Pollution Control Program Regulations and Standards (LLCAPCPRS), "Any person who fails to comply with the requirements of the LLCAPCPRS or who fails to perform any duty imposed by the LLCAPCPRS shall be subject to a civil penalty of not more than \$10,000 per day per violation."

Article 2, Section 32, paragraph (B) of the LLCAPCPRS states that, at sites where construction, use, repair, or demolition is occurring:

"No person may cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired, or demolished without applying all such reasonable measures to prevent particulate matter from becoming airborne so that it remains visible beyond the premises where it originates. The Director may require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne, including but not limited to: paving or frequent cleaning of roads, driveways, and parking lots; application of dust-free surfaces; application of water; and the planting and maintenance of vegetative ground cover."

Other reasonable dust control measures may include, but are not limited to the following:

- Application of non-toxic chemical or organic dust suppressants/surfactants on unpaved roads, traffic areas, and/or storage piles;
- Limit or reduce vehicle speed on unpaved roads or traffic areas;
- Restrict access to areas of the worksite to prevent disturbance of surface soil;
- Apply water to soil/materials prior to moving, handling, or loading; and
- During high winds, minimize or cease activities that disturb the soil or create dust.

The LLCHD Air Quality Program encourages your company to be proactive. Contact any residences or business that are nearby or adjacent to your worksite, and provide them with the name and number of a person to contact if they have concerns or complaints about dust blowing off of the site. Direct your employees to monitor the operations, and to address fugitive dust before it becomes a problem that requires the LLCHD Air Quality Program's intervention.

If you have any questions, please contact the LLCHD Air Quality Program at (402) 441-8040.

v. May 2015